IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

WP(C).No. 27004 of 2007(M)

PETITIONER:

YOUNUS KUNJU, AGED 66, S/O.BAPPU,
THODIYIL PUTHEN VEEDU, AMBIPOIKA P.O.,
KUNDARA, KOLLAM.

BY ADV. SRI.E.S.ASHRAF

RESPONDENTS:

1. THE DEPUTY TAHSILDAR, REVENUE RECOVERY,
   KOLLAM.

2. THE COMMISSIONER FOR WORKMEN'S
   COMPENSATION AND DEPUTY LABOUR COMMISSIONER,
   KOLLAM.

3. THE VILLAGE OFFICER, ELAMPALLOOR
   VILLAGE OFFICE, KOLLAM.

4. T.ANOOPKUMAR (KOCHUKUTTAN),
   S/O.THULASEEDHARAN PILLAI, THULASI BHAVAN,
   PAZHANGALAM, NATTIKA.P.O., KOLLAM.

BY G.P. SHRI.A.J.VARGHESE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

Counsel for the petitioner seeks permission to withdraw this writ petition without prejudice to the petitioner's right, if any, to file a petition in W.P(C).No. 29486/2006 for extension of time to comply with the conditions imposed therein. Permission granted and the writ petition is dismissed as withdrawn without prejudice to the above right of the petitioner, if any.

Sd/-
S.Siri Jagan, Judge.

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///True copy///

P.A. to Judge.

M.N.KRISHNAN, J

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W.P.(C) No.27004 OF 2006

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Dated this the 29th day of May, 2007

JUDGMENT

This writ petition is filed seeking to set aside Exts.P4 and P4(a) proclamation for auction of the sale of the plaint schedule property and issue a direction to the court below to ascertain the actual amount due to the respondent considering Ext.P3.

2. Heard counsel for both sides in detail. At the time of admission there was an order to deposit Rs.25,000/- and it has been deposited and withdrawn. Subsequent to the filing of the execution petition, the judgment debtor has paid an amount of Rs.3,50,000/- on 7.3.2005. As per Ext.R1(a) statement, the balance as on 16.10.2006 is Rs.6,79,980/-. The judgment debtor is challenging the correctness of the said amount. Another contention raised by the judgment debtor is that there are 3 items of property, which are very valuable in nature and it will fetch more than one crore and there is no necessity to sell the entire property for the purpose of realisation of the decree debt.

3. On the other hand, learned counsel for the decree holder would

submit that he had produced valuation statement given by the Tahsildar and so there is no merit in the contention of the judgment debtor. Regarding the showing of price in the sale proclamation the matter is squarely covered by the proviso to Order XXI Rule 66 C.P.C. The proviso reads as follows:

> "Provided further that nothing in this rule shall be construed as requiring the Court to enter in the proclamation of sale its own estimate of the value of the property, but the proclamation shall include the estimate, if any, given, by either or both of the parties".

As far as this point is concerned, the parties will be satisfied by directing the court to show the price estimated by both sides in the sale proclamation.

4. It has been repeatedly held by the Apex Court that valuable properties shall not be sold in toto if the decree amount could be realised by selling part of the property or items of property. Therefore in the fitness of things, it is just and proper to direct the executing court to sell the properties in lots, i.e. item wise and if the amount fetched by sale is inadequate to satisfy the decree debt, the other item may be sold. As far as 3rd point is concerned, the correctness of the amount, i.e. due to the decree holder, that point can be considered at the time of disbursement of the amount after sale is over or at the time of confirmation of sale even if the decree holder is

purchasing the property in auction with the permission of the court.

Therefore the writ petition is disposed of as follows:(1) The executing court is directed to sell the properties item wise and to show in the draft proclamation the estimated value by both the decree holder as well as the judgment debtor. (2) Since there are 3 items, if the sale proceedings are not sufficient to discharge the decree debt after selling the first item the second item may be sold. (3) Since there is some dispute regarding the correctness of the amount including the receipt of the amount it may be looked into by the court at the time of disbursement of the amount or before confirmation of sale. (4) The court is directed to publish a final proclamation with the value shown by the parties and conduct sale in accordance with the rules and it shall not be unnecessarily delayed or protracted. Both the parties are directed to appear before the executing court for further directions on 18.6.2007.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-